BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2023110714

ORDER GRANTING REQUEST FOR RECONSIDERATION AND OVERRULING STUDENT'S OBJECTION

DECEMBER 18, 2023

On December 11, 2023, the undersigned Administrative Law Judge issued an Order Following Prehearing Conference that determined one issue would be heard at the expediated due process hearing. The undersigned determined the two other claims that Student alleged as expedited issues did not fall under 20 U.S.C. 1415(k), but remained in Student's non-expedited due process hearing. Based on the rulings related to the claims that will be heard at the expedited hearing, Sequoia Union High School District's Motion to Unexpedite filed on December 8, 2023, was decided.

On December 15, 2023, Student filed a Notice of Reconsideration and Motion to Stay Matter Pending Decision.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION

Student offers new facts, circumstances, or law to support reconsideration. Student objected to the portion of the prehearing conference that he claims ruled on the admissibility of evidence at the expedited and non-expedited due process hearings. Student contends that he did not have an opportunity to be heard at the December 11, 2023, prehearing conference or to respond to Sequioa Union's motion to unexpedite that was filed on December 8, 2023. The motion for reconsideration is granted.

Student argues that Sequoia Union lied about the facts and circumstances surrounding the April 28, 2023, incident which formed the basis for Student's manifestation determination meeting held on May 8, 2023. The manifestation determination team determined that Student's behavior on April 8, was a manifestation of Student's disability. Student asserts that Student and Parent were deprived meaningful participation in the individualized education program, called IEP, decision making process due to Sequoia Union's actions. Student asserts he must be given an opportunity to present evidence of the investigation of the events on April 28, to show

what happened on that date because Student was deprived of that at the May 8, meeting. Student complains that he has suffered harm because his educational records include misleading and inaccurate information about his behavior. Lastly, Student claims that an order has been issued on a legal question regarding the admissibility of evidence relating to the event on April 28, that deprives Student of due process.

Student cited *Torres v. Sampson County Borad of Education*, U.S. Dist. LEXIS 225310, pg. 12, 13, to support his position. Student cites *Torres's* as providing instructive analysis on the issue raised by Student, that "findings regarding the nature of the 'conduct in question' may be a critical part of evaluating the procedural and substantive appropriateness of the manifestation determination".

In *Torres*, the student allegedly committed a sexual assault of another student. The school district investigated the alleged misconduct, student's principal suspended him, and considered recommending a long-term suspension depending on the outcome of the manifestation determination review. The manifestation determination review committee met and determined that student's conduct was not a manifestation of student's disability, and the school principal recommended long-term suspension. A hearing was held based on the principal's recommendation, and student was suspended for the remainder of the school year. Student filed a request for an expedited due process hearing to determine whether the district denied him a free appropriate public education when it determined that student's conduct was not a manifestation of his disability. The ALJ convened an expedited hearing on the question of whether the district correctly determined that Student's conduct was not a manifestation of student's disability. The ALJ issued a decision reversing the manifestation determination, invalidating the long-term suspension, and ordering student back into his placement.

Torres is distinguishable from Student's matter. In *Torres*, student disagreed with the manifestation determination review team's conclusion that his conduct was not a manifestation of his disability. In this matter, Student is not contesting the outcome of the manifestation determination team's decision that Student's behavior on April 28, was a manifestation of Student's disability. (20 U.S.C. § 1415(k)(1)(E)((i)(I).) Here, the issue for expedited hearing arises from 20 U.S.C. § 1415(k)(1)(E)((i)(II), regarding whether Sequoia Union conducted a legally complaint manifestation determination review on May 8, 2023, by not determining whether Student's conduct on April 28, 2023, was a direct result of Sequoia Union's failure to implement Student's IEP. As a result, *Torres* does not address the issue for Student's expedited due process hearing and does not support Student's arguments.

The parents in *Torres* made the same argument as Student makes here, and the District Court determined the case cited by parent did not support parent's position. In *Torres*, parents argued that the hearing officer in a due process hearing is not only authorized but is obligated to make a determination of the student's actual conduct and is not required to adopt the characterization of the school. (*Torres*, p. 12-13.) The District Court reviewed the case cited by parent and found that it stood for the proposition that the manifestation determination review team should have deferred to the actual conduct as determined by school officials. *Torres* does not support the contention that the ALJ or manifestation determination review team is required to determine student's underlying conduct.

Student argued at prehearing conference that he wanted to present facts at the expedited hearing of what he believes happened on April 28, to demonstrate that the manifestation determination team did not consider the correct facts when it made its decision. The undersigned ruled that Student could litigate the two proposed issues

that were excluded from the expedited hearing to the extent he does not intend to challenge whether the underlying conduct or violation of the code of conduct actually occurred. *Torres* does not support Student's contention that he can present facts at expedited or non-expedited hearing that are different than those relied upon by the manifestation determination review team. In fact, *Torres* supports the undersigned's ruling that it is not an ALJ's role at an expedited hearing, or the manifestation determination team's role to determine the facts related to the Student's misconduct when determining whether the behavior was a manifestation of Student's disability.

ORDER

On reconsideration, Student's objection to the portion of the order that holds that Student cannot introduce evidence at either the expedited or non-expedited due process hearing is overruled as premature. All evidentiary rulings will be made at hearing when exhibits or testimony are offered into evidence. All dates set in this matter are confirmed.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings